

DEC 29 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

SANTOS L. REYES,

Plaintiff-Appellant,

v.

J.S. WOODFORD,* Warden,

Respondent-Appellee.

No. 00-57130

D.C. No. CV-00-00608-VAP

MEMORANDUM**

Appeal from the United States District Court
for the Central District of California,
Virginia A. Phillips, District Judge, Presiding

Argued and Submitted March 6, 2002
Submission Withdrawn April 2, 2002
Resubmitted April 17, 2003
Pasadena, California

Before: PREGERSON, FISHER and TALLMAN, Circuit Judges.

California state prisoner Santos L. Reyes (“Reyes”) appeals the district

* J.S. Woodford is substituted for A. Calderon, her predecessor as Warden of San Quentin State Prison. See Fed. R. App. P. 43(c)(2).

** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

court's order denying his 28 U.S.C. § 2254 habeas corpus petition challenging his sentence under California's "three strikes" law¹ for perjury on a Department of Motor Vehicles driver's license application. Reyes had filled out a license application and attempted to take the written portion of the exam under the name of his cousin Miguel Soto. At trial, Reyes testified that he tried to take the exam for Soto because Soto was illiterate and had failed to pass. Because the perjury conviction was Reyes's third strike, he was sentenced to 26 years to life. Reyes is married and has two children who were one and three years old at the time of sentencing.

Reyes contends that his 26 years to life sentence is grossly disproportionate in violation of the Eighth Amendment. This argument is foreclosed by Lockyer v. Andrade, 123 S. Ct. 1166, 1172-75 (2003) (holding that a California state court's affirmance of two consecutive 25 years to life sentences for petty theft was not contrary to or an unreasonable application of federal law), and Ewing v. California, 123 S. Ct. 1179, 1185-90 (2003) (holding that 25 years to life sentence under the California "three strikes" law did not violate the Eighth Amendment's prohibition on cruel and unusual punishment). The district court therefore

¹Reyes qualified for three strikes enhancement because of two prior convictions, one as a juvenile in 1981 for burglary, and one in 1987 for robbery.

properly denied Reyes's petition.

AFFIRMED.